

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

RICHARD UNDERWOOD,

Plaintiff,

vs.

ALLIED VAN LINES, INC.,

Defendant.

3:11-cv-00035-HDM-RAM

ORDER

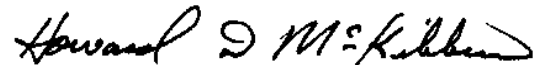
The court has been advised that plaintiff has complied with the required claims process pursuant to 49 C.F.R. § 370.3(a), 49 C.F.R. § 1005.2(a), and the defendant's tariff. Accordingly, leave is granted to the plaintiff to file a second amended complaint. Any such complaint shall be limited to a claim under the Carmack Amendment. The inclusion of a claim for intentional infliction of emotional distress would be futile as it is preempted by the Carmack Amendment "to the extent it arises from the same conduct as the claims for delay, loss or damage to shipped property." *White v. Mayflower Transit, L.L.C.*, 543 F.3d 581, 586 (9th Cir. 2008). Despite

1 plaintiff's assertion otherwise, his proposed claim for intentional  
2 infliction of emotional distress arises from the same conduct  
3 underlying his Carmack Amendment claim. Plaintiff is therefore denied  
4 leave to amend his complaint to add a claim for emotional distress.  
5 Accordingly, the plaintiff's motion to file a second amended  
6 complaint (#20) is granted in part and denied in part in accordance  
7 with this order. The bond previously posted by plaintiff shall remain  
8 deposited with the clerk of the court.

9       Upon the filing of the plaintiff's second amended complaint, the  
10 defendant's motion to dismiss, or in the alternative motion for a  
11 more definite statement(#9), shall be denied as moot. The denial is  
12 without prejudice should the defendant elect to file a motion to  
13 dismiss the second amended complaint.

14       **IT IS SO ORDERED.**

15       DATED this 14th day of April, 2011.

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18       UNITED STATES DISTRICT JUDGE  
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